

Bail Slip

The Appellants 1 to 3 herein (viz) 1. Loganathan ,
2. Baskaran and 3. Govindaraj Accused Nos 1 to 3 in S.C.No.127/2000
on the file of Additional District and sessions Judge, (Fast Track
Court) Vellore, were directed to be released on bail as per order
of this Court dated 31.5.2005 and passed in CrI.M.P.No.4081/2005 in
C.A.No.613/04.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2006

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

and

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

Criminal Appeal No.613 of 2004

1. Loganathan
2. Baskaran
3. Govindaraj

Appellants (Accused 1,2,3)

v.

State by :

Inspector of Police, सतयमेव जयते
Vellore Taluk Police Station,
Cr. No.356 of 1999,
Vellore District.

Respondent

Criminal Appeal filed under Section 374(2) of the Code of
Criminal Procedure against the judgment dated 26.03.2004 made in
Sessions Case No.127 of 2000 on the file of the Court of the
Additional District and Sessions Judge, (Fast Track Court) Vellore.

For appellants : Mr.P.P.Shanmugasundaram,
Senior Counsel, for
Mr.L.Baskaran

For respondent : Mr.P.Kumaresan,
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered
by M.CHOCKALINGAM, J.)

Challenging the judgment of the Additional Sessions Judge, Vellore dated 26.03.2004 made in Sessions Case No.127 of 2000, the appellants have filed this appeal. Before the trial Court, accused 1 and 3 were charged under sections 302 and 307 of the Indian Penal Code and the second accused was charged under sections 302 and 307 (2 counts) of the Indian Penal Code. The trial Court found all the accused guilty under section 302 of the Indian Penal Code and sentenced them to undergo life imprisonment and to pay a fine of Rs.3,000/- carrying a default sentence of rigorous imprisonment for six months. Accused 1 to 3 were acquitted of the charge under section 307 of the Indian Penal Code. Instead, accused 1 and 3 were convicted for the offence under section 324 of the Indian Penal Code and the second accused was convicted for the offence under section 324 (2 counts) of the Indian Penal Code and they were sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.2000/- and in default to undergo rigorous imprisonment for six months. The second accused was sentenced to undergo a similar sentence for each count.

2. The case of the prosecution, shorn of unnecessary details, could be stated thus : Accused 1 to 3 are brothers and they are sons of one Chinnasamy. P.W.5 is the wife of the deceased Subramani. P.Ws.3 and 4 are their sons and P.W.6 is their daughter. The deceased Subramani was having a brick chamber. The deceased used to store fire wood at the brick chamber. P.W.1 Selvam, P.W.2, Anusuya and one Mala are the employees of the deceased for the purpose of preparation of soil to be used for the manufacture of brick. They all belong to Idayankulam village near Kamavanpettai. P.W.5 Pushpa's father Narayanan was murdered by Chinnasamy, the father of the accused. Both the families had a dispute over the ridge dividing their lands and in that regard they had quarrelled on the night of 08.06.1999.

3. On 09.06.1999 P.W.1 Selvam came to the chamber by 03.00 am for preparing the soil to be used for manufacturing brick. By 05.00 am, P.W.2 Anusuya and Mala joined with P.W.1 in the preparation of soil. The deceased Subramani was also there. At that time the first accused came through the eastern side of the brick chamber. On seeing the first accused, Subramani tried to escape from the place through the western side, but accused 2 and 3 came from the western side and all the accused surrounded him. The third accused made a heavy blow on the head of the deceased and accused 1 and 2 also joined him in attacking the deceased on his head. The deceased fell down. On seeing this, P.W.2 went to the house of the deceased which is situated nearby and informed P.W.5, the wife of the deceased and their children. Immediately, P.W.5 accompanied by her children, P.Ws.3, 4 and 6, came to scene of

occurrence and on seeing them, the second accused assaulted P.Ws.3 and 4; the third accused assaulted P.W.3 and the first accused assaulted P.W.6 with sticks they had in their hands. The incident was witnessed by P.Ws.1 and 2. The accused ran away from the place of occurrence.

4. On information, the Sub Inspector of Police, P.W.22 reached the place of occurrence and obtained statement, Ex.P.1 from P.W.1. He came back to the police station and registered a case in crime No.356/1999 for the offences punishable under sections 302, 324, 323 and 307 of the Indian Penal Code. The printed first information report is Ex.P.22 which was sent to Court and to higher officials for investigation.

5. P.W.23, the investigating officer took up investigation in the case and rushed to the scene of occurrence, where he made an inspection of the scene and prepared Ex.P.11, observation mahazar and seized blood stained and sample earth from the place of occurrence. He also drew rough sketch, Ex.P.27. He conducted inquest over the dead body of the deceased Subramani and prepared Ex.P.23 report. He further enquired P.Ws.1 to 3 and recorded their statements. Following the same the dead body was sent for postmortem with the requisition, Ex.P.2.

6. P.W.13, Dr.Vasanthakumar conducted autopsy on the dead body of the deceased and has given his finding in Ex.P.3, postmortem certificate. P.W.23 further examined the witnesses Mala, Lakshmi, Saraswathi and recorded their statements. He also visited the Government Hospital and enquired P.W.5, Pushpa and recorded her statement. He enquired the doctors who treated them and obtained Exs.P.5 to 7 accident registers in respect of their injuries. On 10.06.1999 at 10.00 am he arrested all the accused near Kaniambadi bus stand. All the accused gave confession statements in the presence of witnesses, the admissible portions of which are marked as Exs.P.13 to P.15. The third accused was found injured and he was sent for treatment to the Government Hospital and subsequently remanded to judicial custody. The material objects seized under mahazars were sent to Court. The properties were sent to the Forensic Department through Ex.P.18, covering letter of the Court and the reports received are Exs.P.19 to P.21. On completion of the investigation, the investigating officer filed the final report in Court against the accused. The case was committed to Court of Sessions. Necessary charges were framed. In order to substantiate the charges, the prosecution examined 23 witnesses and marked 28 exhibits and eight material objects.

7. On completion of the evidence on the side of the prosecution, the accused were questioned under section 313 of the Code of Criminal Procedure and they denied them as false. No witness was examined on the side of the accused. After completion of the evidence and arguments on either side, the trial Court, on considering the arguments and upon perusing the materials available on record, found that the prosecution has proved the charges against all the accused beyond all reasonable doubts and therefore

convicted and sentenced the accused as referred to above. Hence, the appeal at the instance of the appellants/accused 1 to 3.

8. Advancing his arguments, learned senior counsel appearing for the appellants would submit that the prosecution has miserably failed to prove its case beyond all reasonable doubts. According to the prosecution, the incident was witnessed by P.Ws.1 and 2. In so far as P.W.1 is concerned, he is the author of the complaint, but the circumstances point out that P.W.1 could not have been present at the place of occurrence. According to P.W.1, he witnessed the occurrence and immediately he left for his house and he came to the place only after P.W.22 came to the scene of occurrence, who enquired him and got Ex.P.1. The conduct of P.W.1, who was employed under the deceased, was not natural and this would go to show that he could not have been in the place and his services could have been taken by the police subsequently for getting Ex.P.1 report from him. There is discrepancy between the evidence of P.W.1 and Ex.P.1 regarding the place of attack on the deceased and therefore, P.W.1 could not have seen the occurrence. In the instant case, the first information report, as claimed by the prosecution, came into existence at 08.15 am at the police station and reached the Court at 07.00 pm. The place of occurrence is situated 22 kms away from the police station, but the police station and the Judicial Magistrate's Court are situated in the same compound. P.W.1 went to the place of occurrence and took Ex.P.1 report at 07.30 am, and the case was registered at 08.15 am. If to be so, the delay in the first information report reaching the Court at 07.00 pm when the Court is situated in the same compound, is not explained and this would be indicative of the fact that the first information report now before the Court was an embellished version and developed one. According to the prosecution, all the accused came to the place of occurrence armed with sticks, but the evidence would show that they took the fire wood, which was available at the place of occurrence. In the instant case, the third accused also is shown to have sustained injuries, that too on the vital part, i.e., on the head, which was treated by P.W.16, the doctor and Ex.P.10 accident register has been marked in this regard. If to be so, a duty is cast upon the prosecution to explain as to how the injury was sustained by the accused in the course of the same transaction. No injured witness has spoken about the injury sustained by the third accused on his vital part, which is fatal to the prosecution case. Learned counsel would further add that the prosecution relied on and the lower Court also accepted that all the three accused were arrested on 10.06.1999 and pursuant to the confession statements given by them, the weapons of crime were also recovered. The doctor's certificate, Ex.P.10, which was given for the injuries sustained by the third accused would clearly show that the third accused was medically examined by the doctor on 09.06.1999, but he was arrested and put behind the bars on 10.06.1999 and this would destroy the alleged arrest and confession and the consequential recovery of the weapons of offence. The prosecution did not come with the true version with regard to the place of occurrence with acceptable evidence and also the non explanation of the injury on the third

accused would all go to show that the prosecution has failed to prove its case beyond all reasonable doubts and therefore, the appellants/accused are entitled for an acquittal at the hands of this Court. The learned counsel added further that in any event, the act of the accused in attacking the deceased, assuming that the prosecution case is true, would not come under the penal provisions of section 302 of the Indian Penal Code.

9. The Court heard the learned Additional Public Prosecutor on the above contentions and paid its anxious consideration on the submissions made.

10. It is not in dispute that Subramani, the husband of P.W.5 died on account of homicidal violence. The inquest made by the investigating officer and the postmortem conducted by the P.W.13 and the certificate, Ex.P.3 to the effect that the death was on account of shock and haemorrhage and this fact was never questioned by the accused either before the lower Court or before this Court and hence it could be recorded that the deceased died a homicidal death.

11. In order to substantiate the accusation made against the accused, the prosecution marched P.Ws.1 and 2 as eye witnesses and P.Ws.3 to 6 as injured witnesses. At this juncture, it is to be pointed out that this is a case where the injured witnesses are before this Court and strong circumstances are noticed from their evidence and there is no reason to disbelieve their evidence. It is true that three witnesses, P.Ws.3, 4 and 6 are the children of the deceased and P.W.5 is the wife of the deceased. But according to P.Ws.1 and 2, when they were working along with the deceased in the brick chamber at the early hours on the date of occurrence, all the three accused came there and attacked the deceased. This was witnessed by P.Ws.1 and 2. Immediately, P.W.2 went to the house of the deceased, which is a reasonable conduct, and informed the family members and brought them to the scene of occurrence. When the family members, P.Ws.3 to 6 came to the place of occurrence, they were also attacked by the accused. They were sent to the doctor, P.W.15 for being medically examined and the wound certificates in respect of their wounds have been marked as exhibits as referred to above. Thus, the earliest documents to come into existence are the wound certificates for the injuries sustained by P.Ws.3 to 6 wherein it is found noted that P.Ws.3 to 5 have spoken about the occurrence that had taken place, the place of occurrence and the other details. It is the contention of the learned senior counsel that the conduct of P.W.1 going to his house immediately after the incident shows that he could not have seen the occurrence and therefore, his evidence has got to be rejected. It is pertinent to point out that P.W.1 has given explanation that after seeing the occurrence he was shocked and therefore went to his house. In a given case, when a number of persons are witnessing the occurrence, one cannot expect the same reaction from every body as each and every individual would react according to the frame of mind either to come to the rescue of the victim or to run away from the place or to give a complaint or inform the relatives of

the victim. It would all depend upon the mental frame of each and every individual. In the instant case, P.W.2 went and informed the family members of the deceased, but P.W.1 went to his house, but later he came to the place to give Ex.P.1, complaint.

12. Now, in so far as the next contention that there is delay in the first information report reaching the Court, this Court is able to see that there was delay of more than ten hours. But unless and until it is shown that the delay has caused prejudice to the accused, the prosecution case cannot be rejected solely on the ground of such a delay. The initial documents which came into existence are the accident registers in respect of the treatment given to P.Ws.3 to 6, from which, the place of occurrence and the manner of occurrence and the nature of injuries sustained by them - all are found noted, but the names of the assailants are not found, as expected by the Medical Code. The details regarding the occurrence as found in the wound certificates corroborate with the details found in the first information report, which, though reached the Court much later. It is true that there are minor discrepancies with regard to the overt act, but it should be remembered that the occurrence has taken place in the early morning of September. Hence, one could not expect either the eye witness or the injured witness to give a clear narration of the incident. It is to be pointed out that the evidence of eye witnesses and the injured witnesses would clearly show that it was the accused who attacked the deceased on his head with fire woods and caused his death and also in the course of the same transaction, attacked P.Ws.3 to 6 and caused them simple injuries. The medical evidence stands corroborated by the ocular testimony.

13. As rightly pointed out by the learned senior counsel for the accused, the Court has rejected the confession statement and the consequential recovery, in view of the fact that the third accused was examined by P.W.9 the doctor on 09.06.1999 itself. Hence, that portion of the case of the prosecution has to be rejected, but even by rejecting that portion of the evidence, the Court is able to see sufficient evidence, which would inspire the confidence of the Court pointing to the guilt of the accused. Hence, the lower Court is perfectly justified in finding that it was accused 1 to 3 who caused the death of the deceased and who attacked P.Ws.3 to 6.

14. Coming to the next limb of argument that even assuming that the prosecution has proved that it was the act of the accused which caused the death of the deceased, the act of the accused would not attract the penal provisions of murder. In the instant case, the occurrence has taken place at 05.00 am and the place of occurrence is the brick chamber of the deceased, where the accused came and took out fire woods from the place where P.Ws.1 and 2 were working and went and asked the deceased as to the dispute regarding the ridge, which dispute was prevalent for a long time and following the same, the occurrence has taken place on the next day morning. Thus the Court is able to see that there was a pending dispute between them and there were wordy quarrels that had taken

place on the previous night. That was the reason for the occurrence on the next day morning. At this stage, it is to be pointed out that the accused 1 to 3 came to the place of the deceased to question him and took out fire wood from the place of occurrence and the act perpetrated by the accused was neither deliberate nor intentional, but at the same time they used only sticks to cause the injuries. Under the circumstances, the Court is of the considered view that the nature of the act committed by the accused would not attract the penal provisions of murder, but it would amount to culpable homicide not amounting to murder and therefore, the act of the accused can be brought under the penal provisions of section 304 Part I of the Indian Penal Code. Accordingly, the conviction of all the accused for the offence under section 302 of the Indian Penal Code is set aside and instead they are convicted under section 304 Part I of the Indian Penal Code, for which they are directed to undergo rigorous imprisonment for seven years. In all other respects, the judgment of the trial Court stands confirmed. The Criminal appeal is dismissed with the above modification in conviction and sentence. The learned Sessions Judge is directed to secure the custody of the appellants to undergo the remaining period of sentence.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Additional District and Sessions Judge,
(Fast Track Court), Vellore.
2. Do Thro The Principal District and Sessions Judge,
Vellore.
3. The Judicial Magistrate No.1, Vellore,
Vellore District.
4. Do Thro The Chief Judicial Magistrate, Vellore.
5. The Superintendent, Central Prison, Vellore.
6. The Inspector of Police,
Vellore Taluk police station, Vellore.

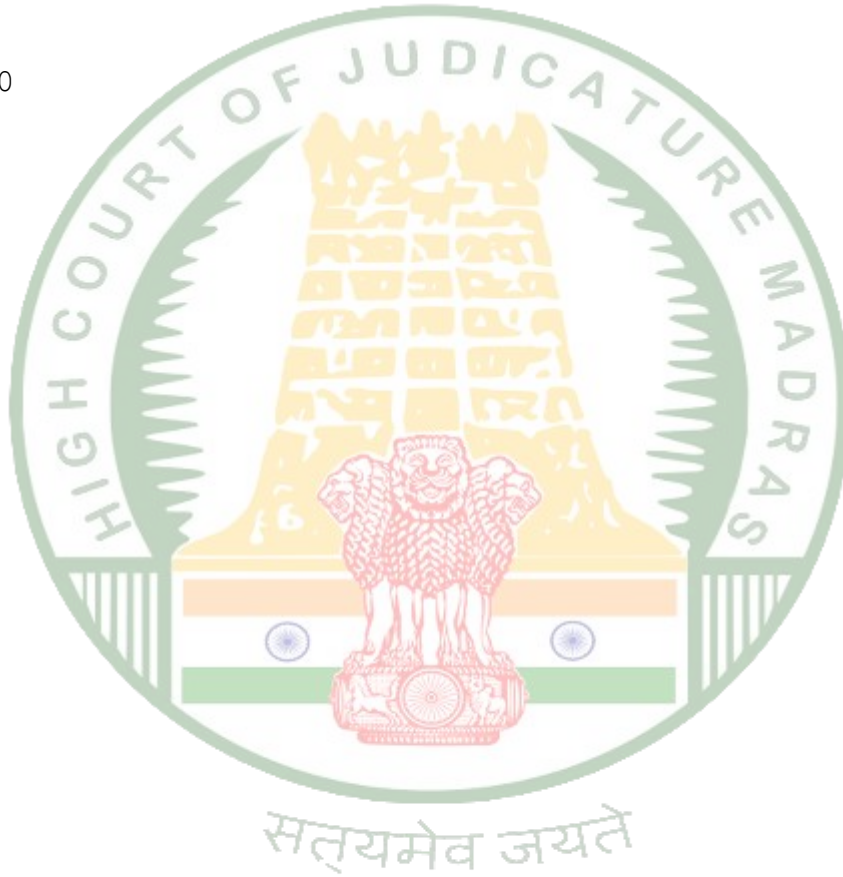
8. The Director General of Police,
Chennai-4.

9. The District Collector,
Vellore.

1 cc to Mr.L. Baskaran, Advocate, Sr. 45240

Crl.A.No.613 of 2004

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